

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CASSANDRA C DE BACA, as Personal Representative of the ESTATE OF BEN C DE BACA, deceased,

Plaintiff,

vs.

No. CIV 17-1058 JB/LF

TOWN OF BERNALILLO, ex. rel TOWN OF BERNALILLO POLICE DEPARTMENT; OFFICER JEREMIAH BENJEY, sued in his individual capacity; OFFICER SHAWN VIGIL, sued in his individual capacity; COUNTY OF SANDOVAL, ex. rel SANDOVAL COUNTY SHERIFF'S DEPARTMENT; OFFICER PATRICK SEGURA, sued in his individual capacity; SERGEANT JAMES LAPORTE, sued in his individual capacity, and OFFICER JOHN DOE, 1-10, sued in their individual capacities,

Defendants.

**ORDER<sup>1</sup>**

**THIS MATTER** comes to the Court on: (i) Defendants Town of Bernalillo, Jeremiah Benjey, Shawn Vigil and James LaPorte's Motion for a Stay Pending a Decision by the Thirteenth Judicial District Attorney as to Whether the Circumstances Surrounding the Death of Mr. C de Baca Will Be Presented to a Grand Jury, filed December 1, 2017 (Doc. 21)(“Motion for Stay”); and (ii) Defendant Patrick Segura’s Motion for Summary Judgment as to Count III

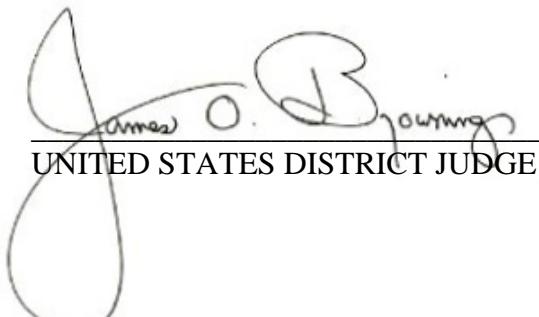
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<sup>1</sup>This Order disposes of Defendants Town of Bernalillo, Jeremiah Benjey, Shawn Vigil and James LaPorte’s Motion for a Stay Pending a Decision by the Thirteenth Judicial District Attorney as to Whether the Circumstances Surrounding the Death of Mr. C de Baca Will Be Presented to a Grand Jury, filed December 1, 2017 (Doc. 21), and Defendant Patrick Segura’s Motion for Summary Judgment as to Count III (Qualified Immunity) (Doc. 29). The Court will, however, issue a Memorandum Opinion at a later date more fully detailing its rationale for this decision.

(Qualified Immunity), filed January 2, 2018 (Doc. 29)(“MSJ”). The primary issues are: (i) whether a stay is warranted pending a potential criminal prosecution being brought against some or all of the Defendants moving for the stay -- Defendants Town of Bernalillo, Officer Benjey, Officer Vigil, and Sergeant LaPorte; and (ii) whether Officer Segura is entitled to qualified immunity as to Plaintiff C de Baca’s claim of excessive force under 42 U.S.C. § 1983. The Court concludes that: (i) a stay is not warranted, because there are no indictments of any of the Defendants, and there is no reliable way to predict when the District Attorney’s investigation will decide whether to bring charges or whether charges will ever be sought, and any concerns under the Fifth Amendment of the Constitution of the United States of America can be fully addressed as they arise during discovery through less drastic measures; and (ii) Officer Segura was acting under color of tribal law during the incidents in question, meaning he cannot be sued properly under § 1983, and, even if Segura were acting under color of state law, the law was not clearly established on September 6, 2015, such that a tribal police officer in Segura’s position would have had notice that he could be held liable for federal constitutional violations under § 1983 by providing backup assistance as requested by a state police department, so qualified immunity is proper. Accordingly, the Court denies the Motion to Stay and grants the MSJ.

**IT IS ORDERED** that: (i) Defendants Town of Bernalillo, Jeremiah Benjey, Shawn Vigil and James LaPorte’s Motion for a Stay Pending a Decision by the Thirteenth Judicial District Attorney as to Whether the Circumstances Surrounding the Death of Mr. C de Baca Will Be Presented to a Grand Jury, filed December 1, 2017 (Doc. 21), is denied without prejudice as to allow Defendants Town of Bernalillo, Officer Benjey, Officer Vigil, and Sergeant LaPorte to move again if the circumstances change; and (ii) Defendant Patrick Segura’s Motion for Summary Judgment as to Count III (Qualified Immunity), filed January 2, 2018 (Doc. 29), is

granted. The Court terminates Officer Patrick Segura and County of Sandoval as defendants in this action because no claims remain against them.<sup>2</sup>



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UNITED STATES DISTRICT JUDGE

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--and--

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<sup>2</sup>Defendant Officer Patrick Segura and Defendant County of Sandoval previously filed a motion to dismiss Counts I and II. See Motion to Dismiss Counts I and II by Defendants County of Sandoval and Officer Patrick Segura, filed October 30, 2017 (Doc. 5)(“State Motion”). These claims are for wrongful death under the New Mexico Tort Claims Act, NMSA § 41-4-1 to -27 (“NMTCA”), and negligent training and supervision under the NMTCA, respectively. See Complaint for Wrongful Death ¶¶ 91-103, at 11-15, filed in state court September 8, 2017, filed in federal court October 24, 2017 (Doc.1-1)(“Complaint”). After the filing of the State Motion, Plaintiff C de Baca, Sandoval County, and Officer Segura stipulated to the dismissal of Counts I and II with prejudice. See Stipulation of Dismissal with Prejudice of Count I and II as Against Defendants County of Sandoval and Patrick Segura, filed November 30, 2017 (Doc. 20). Besides Count III, the only other claim in the Complaint is Count IV, for failure to intercede to prevent constitutional violations, which is only asserted against Defendants Sergeant James LaPorte and John Does 1-10. See Complaint ¶¶ 118-33, at 18-20.

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